

Key Issues Paper No. 5



Legislation and School Exclusions in Australia – Possibilities for Reform¹

Australian schools are guided by state and territory legislation in the use of exclusionary practices (for further information see Key Issues Paper #2: Understanding Legislation and School Exclusions in Australia). The way in which legislative policies are framed is important because research shows that it influences practices (Graham 2018, McCluskey, Cole et al. 2019). Legislation and policy related to school exclusions can be framed in ways that provide guidance for school discipline but also keep students at school where possible. Legislative policies should attend to the following:

1. Determination

Exclusionary practices should be considered as a last resort. The priority should be to keep students in school and minimise losses to learning time.

In determining whether to remove a student, principals should:

- conduct a thorough assessment of the circumstances, that is, investigate the in-school and out-of-school issues that may be impacting on their behaviour.
- prepare an intervention and prevention plan to support the student and minimise repeat behaviours.
- assess the type of behaviour and consider if it warrants the use of a exclusionary response and whether this will prevent the behaviour from occurring again i.e. disengaged, low-level disruptive or aggressive and anti-social behaviour.
- consider an alternative way of modifying the school context and/or behaviour that enables the student to remain at school.
- consider whether the exclusionary measure is proportionate to the behaviour to which it will be applied.
- ensure reasonable opportunity for the student to attend counselling, undertake relevant educational programs or receive other appropriate assistance.

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- assess the unique characteristics of the student, including their age, educational need, level of disability, cultural background, and residential and social circumstances and whether an exclusionary response will contribute to further disadvantage.
- consider the effects that a disruption to the student's learning will have before imposing a fixed-term or permanent exclusion.

2. Procedural fairness

Children and their parents/guardians have a right to procedural fairness. According to the Australian Law Reform Commission (n.d.), procedural fairness traditionally involves:

- affording a person an opportunity to be heard before making a decision (the fair hearing rule); and
- ensuring a decision maker is impartial and has not pre-judged a decision (the rule against bias).

A fair hearing will generally require:

- prior notice that a decision that may affect a person's interests will be made;
- disclosure of the 'critical issues' to be addressed, and of information that is credible, relevant and significant to the issues; and
- a substantive hearing – oral or written – with a reasonable opportunity to present a case.

To manage potential bias, decision makers should consider the unique characteristics of the student, including their age, educational need, level of disability, cultural background, and residential and social circumstances and whether these might contribute to unconscious or implicit biases.

3. Appeal process

An appeal process must be available for a student or parent/guardian in relation to all forms of exclusion.

An appeal process could include:

- as far as the student's maturity and capacity for understanding allow, the participation of the student has been sought, and any views of the student considered, in deciding whether to suspend or exclude the student;
- the student has been given sufficient information about the decision-making process, in a language and way that the student can understand, to allow the student to take part in the process;
- the student's parents/guardians have been given an opportunity to be consulted, and informed in writing, about the proposed exclusion of the child and reasons for it;
- the student has been given a reasonable opportunity to attend counselling, undertake relevant educational programs or receive other appropriate assistance.

4. Provision of education

Students should continue their education during any fixed-term exclusion. The school should develop a Student Absence Learning Plan that outlines meaningful work and educational support during the absence, so the student has an opportunity to continue his or her full education.

In the case of a permanent exclusion, a principal must take reasonable steps to arrange for the student to access an educational program that allows the student to continue their education. This should involve identifying the future educational, training and/or employment options most suited to the student's needs and agree on a course of action in the event expulsion is decided.

The principal must ensure that the student is provided with other educational and developmental opportunities as soon as practicable. The principal must ensure the student is:

- enrolled at another registered school;
- enrolled at a registered training organisation;
- engaged with an employment agency or other organisation that provides services that support the future employment of the student.

5. Reintegration

A Return to School Plan outlining what the school will do to support a successful transition back to school should be developed in consultation with the students and their parent/guardian. This reintegration process should ensure that pupils feel welcomed back into the school and include the application of strategies designed to support positive and successful reintegration. Strategies may include: 'phased introductions back into school; reintegration meetings including parents, children and multi-agency services; support planning; additional dedicated support; facilitating positive pupil-staff relationships and communication with parents'. (Graham et al. 2019)

School Exclusions Study Overview

The School Exclusions Study aims to investigate the extent to which exclusionary practices such as suspensions and exclusions are used by schools across Australia to discipline students and manage diverse student populations; the reasons why students are suspended and excluded; the profile of students who are suspended and excluded; and the impact on the health, welfare and academic achievement of children who are suspended and excluded from Australian schools. The research will provide the evidence base for policy and school-based interventions that enhance the success of vulnerable children in our schools.

An initial pilot study is focussing on Queensland, South Australia, Victoria and Western Australia to examine the policies and practices that shape and influence the use of school exclusions to address problematic student behaviour. Data includes legislative constructions guiding school disciplinary practices, and publicly available school exclusions data.

For further information please see www.schoolexclusionsstudy.com.au

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- [Commissioner for Children and Young People, Western Australia](#)
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- [Australian Secondary Principals Association](#)
- [Australian Primary Principals Association](#)
- [South Australian Secondary Principals Association](#)
- [South Australian Primary Principals Association](#)
- [Queensland Secondary Principals' Association](#)
- [Western Australian Secondary School Executives Association](#)

References

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